

[4910-13-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 18434; Amdt. Nos. 11-15, 121-130, 127-36, 133-8, 137-9, 139-12]

SUBCHAPTER B—PROCEDURAL RULES

SUBCHAPTER G—AIR CARRIERS, AIR TRAVEL CLUBS, AND OPERATORS FOR COMPENSATION OR HIRE: CERTIFICATION AND OPERATIONS

OFFICIALS WITHIN THE FAA

Delegations of Authority

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments delegate certain authority of the Administrator of the FAA to officials within the FAA to issue, amend, or repeal: (1) Appendices to parts of the Federal Aviation Regulations; (2) technical standard orders; (3) minimum en route IFR altitudes and associated flight data; and (4) standard instrument approach procedures. They also delegate certain authority of the Administrator to: (1) reconsider refusals of applications for amendments to various operating certificates, operations specifications, and airport operations manuals; and (2) reconsider amendments to operations specifications, and airport operations manuals. In addition, these amendments establish procedures for the reconsideration of denials or grants of exemptions. These amendments also delegate authority to the Regional Directors to grant or deny exemptions from the regulations concerning the certification and operations of land airports serving CAB-certificated air carriers. Finally, the amendments delegate the Chief Counsel's authority in connection with the processing of certain rules. This action is taken to provide more timely governmental response and action. These delegations will reduce review levels within the agency with corresponding savings in time, money, and resources.

DATES: Effective date November 9, 1978. Comments are due on or before March 9, 1979.

ADDRESS: Send comments on the procedures in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-24), Docket No. 18434, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Edward P. Faberman, Office of the Chief Counsel, Regulations and Enforcement Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; Telephone: 202-426-3073.

SUPPLEMENTARY INFORMATION:

I. GENERAL

To reduce review levels within rule-making areas that largely involve technical and nonpolicy matters, these amendments delegate certain responsibilities of the Administrator and the Chief Counsel to officials within the FAA and authorize certain other delegations by the Chief Counsel. The reduction of review levels will expedite the rulemaking process which will in turn save time, money, and resources and provide more timely governmental response and action. These amendments also establish procedures for the reconsideration of denials or grants of exemptions. The delegations and procedures are accomplished by specific changes to sections of the Federal Aviation Regulations.

II. DESCRIPTION OF AMENDMENTS

A. AUTHORITY OF "CHIEF COUNSEL"

By the addition of a new paragraph (c) to § 11.41, certain authority of the Chief Counsel in processing exemptions under subpart C of part 11 (14 CFR Part 11) is delegated to the Assistant Chief Counsel for Regulations and Enforcement. Further, under this paragraph the Chief Counsel may delegate responsibilities in processing petitions for rulemaking, issuing notices of proposed rulemaking, and adopting final rules. Section 11.61 of subpart D (rules and procedures for airspace assignment and use) and § 11.81 of subpart E (processing of Airworthiness Directives) are amended to delegate to the Assistant Chief Counsel for Regulations and Enforcement the authority of the Chief Counsel in processing rules under these subparts. It should be noted that under the amendment to subpart C, in contrast to existing subparts D and E, the Regional Counsel does not act as the Chief Counsel except in processing petitions for exemptions from the requirements of part 139 (14 CFR Part 139). Further, the last sentence of paragraph (a) of § 11.41 is placed in new paragraph (c) of § 11.41 since new paragraph (c) contains the definitions for the subpart. Finally, paragraph (c) of § 11.53 is deleted since its substance is incorporated in the new paragraph (c) of § 11.41 which relates to the scope of the entire subpart.

B. APPENDICES TO PARTS, TECHNICAL STANDARD ORDERS, MINIMUM EN ROUTE IFR ALTITUDES AND ASSOCIATED FLIGHT DATA, AND STANDARD INSTRUMENT APPROACH PROCEDURES

By amending § 11.49 the head of the Office or Service concerned is delegated the authority to issue, amend, or repeal appendices to parts of the Federal Aviation Regulations. These appendices contain technical details relating to specific sections within the part and they do not involve basic policy considerations. Therefore, the general involvement of the Administrator in regulatory actions related to appendices is not warranted.

Section 11.49 is also amended to delegate the authority to issue, amend, and repeal: (1) Technical standard orders; (2) minimum en route IFR altitudes and associated flight data; and (3) standard instrument approach procedures. These delegations were authorized by a document published in 25 FR 6489 (July 9, 1960) and paragraph 802 of order FSP 1100.1, as amended March 9, 1973. This amendment merely serves to publish these existing delegations in the Federal Aviation Regulations.

C. RECONSIDERATION OF DENIALS OR GRANTS OF EXEMPTIONS

A new section is added to part 11 establishing procedures for processing petitions for reconsideration of denials and grants of exemptions. Previously, there has been no prescribed procedure, but normally, reconsideration has been by the Administrator. New § 11.55 (a) and (b) codifies this procedure in the Federal Aviation Regulations.

In contrast to the above procedure, new § 11.55(c) provides that, in the case of a petition for reconsideration of a denial of an exemption from the requirements of part 67 of the Federal Aviation Regulations, (14 CFR Part 67) the petition is to be filed with, and the reconsideration is to be by, the Federal Air Surgeon. The difference in the procedure for reconsideration of denials of part 67 exemptions is due to the large quantity of part 67 exemptions requested, approximately 100 a month, and the specialized nature of the medical decisionmaking in these cases which requires specialized medical expertise. A decision on a petition for reconsideration still would be made by the Administrator if the Federal Air Surgeon referred the decision on the initial petition for exemption to the Administrator in accordance with § 11.53.

A petition for reconsideration would have to be based on either a material mistake in fact or law or the presence of an additional fact not presented to the FAA in the initial petition.

D. AIRWORTHINESS DIRECTIVES AND AIRSPACE ASSIGNMENT AND USE

Except for the amendments to §§ 11.61 and 11.81, the revisions of part 11 made by these amendments do not relate to the issuance of Airworthiness Directives and rules concerning airspace assignment and use provided for in subparts D and E of part 11. Those subparts already contain delegations sufficient to provide for appropriate decentralization of rulemaking.

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E. VARIOUS OPERATING CERTIFICATES, OPERATIONS SPECIFICATIONS AND AIRPORT OPERATIONS MANUALS

Parts 121, 127, 133, 137, and 139 of subchapter G of the Federal Aviation Regulations (14 CFR Parts 121, 127, 133, 137, and 139) are revised to indicate that the Administrator delegates to the head of the Office or Service concerned the authority to reconsider refusals of applications by certificate holders for amendments to various operating certificates, operations specifications, and airport operations manuals, and to reconsider amendments initiated by the FAA to operations specifications and airport operations manuals. Certain editorial changes are also contained in these amendments which make the sections affected consistent with the delegated authority.

F. EXEMPTIONS FROM PART 139

Section 139.19 is revised to delegate to the appropriate Regional Director the authority to grant or deny exemptions from the requirements of part 139 with the exception of those petitions filed on behalf of military airports. The Assistant Administrator for Airports Programs is authorized to grant or deny the petitions for exemptions from the requirements of part 139 filed on behalf of military airports. These delegations are authorized because of the local nature of most part 139 exemptions and the necessity for coordinating a national policy for those exemptions filed on behalf of military airports. Finally, the language in §11.41 has been changed to more accurately reflect the fact that exemptions are requested "from the requirements of" part 139 and not "filed under" that part.

III. EFFECTIVE DATE AND REQUEST FOR COMMENTS

Since these amendments are procedural in nature and implement existing statutory authority, notice and opportunity for public comment is not required. In addition, since these amendments are procedural and do not impose an additional burden, good cause exists for making them effective less than 30 days after publication. However, the FAA contemplates a review of the procedures established by these amendments after they have been in operation for at least 12 months. Interested persons are invited to submit such comments as they may desire with respect to these amendments. Communications should identify the regulatory docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue SW., Washington, D.C. 20591. All comments received on or before

March 9, 1979, will be considered during the review, and will be available both before and after that date in the Rules Docket for examination by interested persons.

IV. ADOPTION OF THE AMENDMENTS

Accordingly, parts 11, 121, 127, 133, 137, and 139 of the Federal Aviation Regulations (14 CFR Parts 11, 121, 127, 133, 137, and 139) are amended as follows, effective November 9, 1978.

1. By revising § 11.41 by deleting the last sentence of paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 11.41 Scope.

(c) For the purposes of this subpart—

(1) The words "Office or Service" include the Aeronautical Center and the National Aviation Facilities Experimental Center, and include Regional Directors with respect to petitions for exemptions from the requirements of part 139 of this chapter; and

(2) "Chief Counsel" means—

(i) the Chief Counsel;

(ii) a Regional Counsel with respect to petitions for exemptions from the requirements of part 139 of this chapter;

(iii) the Assistant Chief Counsel for Regulations and Enforcement for all other exemptions processed under this subpart; or

(iv) any person to whom the Chief Counsel has delegated authority in the matter concerned.

2. By revising § 11.49 to read as follows:

§ 11.49 Adoption of final rules.

(a) After the Office or Service concerned has completed its analysis and evaluation of the information, views, and arguments submitted with respect to a proposed rule, representatives of that Office or Service and the Office of the Chief Counsel prepare an appropriate rule, subject to the approval of the Chief Counsel as to form and legality. Except as provided in paragraph (b) of this section, the rule is then submitted, with the recommendations of the head of the Office or Service concerned and the Chief Counsel, to the Administrator for consideration. If a rule is adopted, it is published in the FEDERAL REGISTER.

(b) Final authority to issue, amend, and repeal—

(1) An appendix to a part is delegated to the head of the Office or Service concerned;

(2) Technical standard orders for aircraft materials, parts, processes, and appliances under part 37 of this chapter is delegated to the Director, Flight Standards Service; and

(3) Minimum en route IFR altitudes and associated flight data under part 95 of this chapter, and standard instrument approach procedures under part 97 of this chapter is delegated to the Chief, Aircraft Programs Division, Flight Standards Service.

§ 11.53 [Amended]

3. By amending § 11.53 by deleting paragraph (c).

4. By the addition of a new section to subpart C of part 11 to read as follows:

§ 11.55 Reconsideration of a denial or grant of exemption.

(a) Except as provided in paragraph (c) of this section, if a petition for exemption is denied, the petitioner may file a petition for reconsideration with the Administrator. The petition must be filed, in duplicate, within 30 days after the petitioner is notified of the denial of the exemption.

(b) If a petition for exemption is granted, a person other than the initial petitioner may file a petition for reconsideration with the Administrator. The petition must be filed, in duplicate, within 45 days after the grant of exemption is issued.

(c) If a petition for exemption from the requirements of part 67 of this chapter is denied, the petitioner may file a petition for reconsideration with the Federal Air Surgeon. The petition must be filed in duplicate, within 30 days after the petitioner is notified of the denial of the exemption. However, if the final action on the initial petition was by the Administrator in accordance with the second sentence of § 11.53(a), the Federal Air Surgeon refers the petition for reconsideration and recommendations and those of the Chief Counsel to the Administrator for final action.

(d) A petition for reconsideration under this section must be based on the existence of one or more of the following:

(1) A finding of a material fact that is erroneous.

(2) A necessary legal conclusion that is without governing precedent or is a departure from or contrary to law, FAA rules, or precedent.

(3) An additional fact relevant to the decision that was not presented in the initial petition for exemption. In order for a petition under paragraph (a) or (c) of this section to be based on this ground, the petition for reconsideration must state the reason the additional fact was not presented in the initial petition.

§ 11.61 [Amended]

5. By amending paragraph (d) of § 11.61 by inserting the words "or the Assistant Chief Counsel for Regulations and Enforcement," between the words "or a Regional Counsel," and "or".

§ 11.81 [Amended]

6. By amending paragraph (c) of § 11.81 by inserting the words "or the Assistant Chief Counsel for Regulations and Enforcement," between the words "or a Regional Counsel," and "or".

§ 121.77 [Amended]

7. By amending § 121.77 as follows:

(A) By revising the introductory clause of paragraph (a) and by revising paragraph (b) to read as follows:

§ 121.77 Amendment of certificate.

(a) An operating certificate issued under this part may be amended—

(b) An applicant for an amendment to an operating certificate must file its application with the District Office at least 15 days before the proposed effective date of that amendment, unless a shorter filing period is allowed by that office.

(B) By deleting the word "Administrator" from paragraph (a)(1) and substituting in its place the words "FAA District Office charged with the overall inspection of the certificate holder's operations".

(C) By deleting the words "Administrator personally" from paragraph (c) and substituting in their place the words "Director, Flight Standards Service."

§ 121.79 [Amended]

8. By amending § 121.79 as follows:

(A) By deleting the word "Administrator" from the introductory clause of paragraph (a) and substituting in its place the words "FAA District Office charged with the overall inspection of the certificate holder's operations".

(B) By deleting the word "Administrator" from paragraphs (a)(1) and (a)(2) and substituting in its place the words "District Office".

(C) By amending paragraph (b) by deleting the word "Administrator" from all sentences except the third and substituting in its place the words "District Office" and by deleting the word "he" from the fourth sentence and substituting in its place the word "it".

(D) By revising the third sentence of paragraph (b) and by revising paragraph (c) to read as follows:

§ 121.79 Amendment of operations specifications.

(b) * * * The amendment becomes effective not less than 30 days after the holder receives notice of it, unless the holder petitions the Director,

Flight Standards Service, to reconsider the amendment, in which case its effective date is stayed pending a decision by the Director. * * *

(c) An applicant must file its application for an amendment of operations specifications with the District Office at least 15 days before the date that it proposes for the amendment to become effective, unless a shorter filing period is allowed by that office.

(E) By deleting the words "Administrator personally" from paragraph (d) and substituting in their place the words "Director, Flight Standards Service".

§ 127.25 [Amended]

9. By amending § 127.25 as follows:

(A) By deleting the word "he" from paragraph (a) and substituting in its place the words "the Administrator".

(B) By amending paragraph (b) by deleting the word "Administrator" and substituting in its place the words "FAA District Office charged with the overall inspection of the certificate holder's operations" and by deleting the word "he" and substituting in its place the word "it".

§ 127.27 [Amended]

10. By amending § 127.27 as follows:

(A) By deleting the word "Administrator" from the introductory clause of paragraph (a) and substituting in its place the words "FAA District Office charged with the overall inspection of the certificate holder's operations".

(B) By deleting the word "Administrator" from paragraphs (a)(1) and (a)(2) and substituting in its place the words "District Office".

(C) By amending paragraph (b) by deleting the word "Administrator" from all sentences except the third and substituting in its place the words "District Office" and by deleting the word "he" from the fourth sentence and substituting in its place the word "it".

(D) By revising the third sentence of paragraph (b) and by revising paragraph (c) to read as follows:

§ 127.27 Amendment of operations specifications.

(b) * * * The amendment becomes effective not less than 30 days after the air carrier receives notice of it, unless the air carrier petitions the Director, Flight Standards Service, to reconsider the amendment, in which case its effective date is stayed pending a decision by the Director. * * *

(c) An applicant must file its application for an amendment of operations

specifications with the District Office at least 15 days before the date that it proposes for the amendment to become effective, unless a shorter filing period is allowed by that office.

(E) By deleting the words "Administrator personally" from paragraph (d) and substituting in their place the words "Director, Flight Standards Service".

11. By revising § 133.25 to read as follows:

§ 133.25 Amendment of certificate.

The holder of a Rotorcraft External-Load Certificate may apply to the FAA District Office having jurisdiction over the area in which the applicant's home base of operation is located, or to the District Office nearest the area in which operations are to be conducted, for an amendment of the applicant's certificate, to add or delete a rotorcraft or a rotorcraft-load combination authorization, by executing the appropriate portion of the form used in applying for a Rotorcraft External-Load Operator Certificate. If the applicant for the amendment shows compliance with §§ 133.19, 133.21, and 133.23, the District Office issues an amended Rotorcraft External-Load Operator Certificate to the applicant with authorization to operate with those classes of rotorcraft-load combinations for which the applicant complies with the applicable provisions of subpart D of this part.

§ 137.17 [Amended]

12. By amending § 137.17 as follows:

(A) By revising the introductory clause of paragraph (a) to read as follows:

§ 137.17 Amendment of certificate.

(a) An agricultural aircraft operator certificate may be amended—

(B) By deleting the word "his" from paragraph (a)(1) and substituting in its place the words "the Administrator's".

(C) By deleting the word "he" from the second sentence of paragraph (b) and substituting in its place the word "it".

(D) By amending paragraph (c) by deleting the word "Administrator" and substituting in its place the words "District Office" and by deleting the word "he" and substituting in its place the word "it".

(E) By deleting the words "Administrator personally" from paragraph (d) and substituting in their place the words "Director, Flight Standards Service".

§ 139.7 [Amended]

13. By amending § 139.7 as follows:

(A) By revising the introductory clause of paragraph (a) to read as follows:

§ 139.7 Amendment of certificate.

(a) An airport operating certificate issued under this part may be amended—

* * * * *

(B) By deleting the word "Administrator" from paragraph (a)(1) and substituting in its place the words "FAA Airport Field Office in whose area the airport is located".

(C) By deleting the words "FAA Airport field office in whose area the airport is located," from paragraph (b) and substituting in their place the words "Airport Field Office".

(D) By amending paragraph (c) by deleting the words "FAA Airport field office" and substituting in their place the words "Airport Field Office" and by deleting the words "Administrator personally" and substituting in their place the words "Assistant Administrator for Airports Programs".

§ 139.9 [Amended]

14. By amending § 139.9 as follows:

(A) By deleting the word "Administrator" from the introductory clause of paragraph (a) and substituting in its place the words "FAA Airport Field Office in whose area the airport is located".

(B) By deleting the word "Administrator" from paragraphs (a)(1) and (a)(2) and substituting in its place the words "Airport Field Office".

(C) By amending paragraph (b) by deleting the word "Administrator" from all sentences except the third and substituting in its place the words "Airport Field Office" and by deleting the word "he" in the fourth sentence and substituting in its place the word "it".

(D) By revising the third sentence of paragraph (b) to read as follows:

§ 139.9 Amendment of airport operations manual or airport operations specifications.

* * * * *

(b) * * * The amendment becomes effective not less than 30 days after the certificate holder receives notice of it, unless the certificate holder petitions the Assistant Administrator for Airports Programs to reconsider the amendment, in which case its effective date is stayed pending a decision by the Assistant Administrator.

* * * * *

(E) By deleting the words "FAA airport field office in whose area the airport is located," from paragraph (c) and substituting in their place the words "Airport Field Office".

(F) By amending paragraph (d) by deleting the words "FAA airport field office" and substituting in their place the words "Airport Field Office" and by deleting the words "Administrator personally" and substituting in their place the words "Assistant Administrator for Airports Programs".

§ 139.19 [Amended]

15. By amending § 139.19 as follows:

(A) By inserting the words "from any requirement of this part. A person may petition for an exemption" between the words "for an exemption" and "from the safety" in the first sentence of paragraph (a).

(B) By deleting the words "airport field office" from paragraph (b) and substituting in their place the words "Airport Field Office".

(C) By revising the title of the section and by revising paragraph (c) to read as follows:

§ 139.19 Exemptions.

* * * * *

(c) Except for a petition filed on behalf of a military airport, each petition filed under this section is referred for action to the appropriate Regional Director who may grant or deny the petition. A petition filed on behalf of a military airport is referred for action to the Assistant Administrator for Airports Programs. However, if the Regional Director or Assistant Administrator finds that the grant or denial involves a technical or policy determination that should be made by the Administrator, the Regional Director or Assistant Administrator refers the petition to the Administrator for final action.

(Secs. 313 and 601 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354 and 1421); Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

The Federal Aviation Administration has determined that this document is not significant in accordance with the criteria required by Executive Order 12044, and set forth in the proposed "Department of Transportation Regulatory Policies and Procedures" published in the FEDERAL REGISTER June 1, 1978 (43 FR 23925). In addition, these amendments are procedural in nature and the Federal Aviation Administration has determined that the expected impact of these amendments is so minimal that they do not require an evaluation.

Issued in Washington, D.C. on October 31, 1978.

LANGHORNE BOND,
Administrator.

[FR Doc. 78-31453 Filed 11-9-78; 8:45 am]